

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Todd Humphrey,	:
Plaintiff,	:
	:
v.	: File No. 2:09 CV 226
	:
Joseph Montereal, Gregory	:
Pittsfield, Nedwin Bailey,	:
Edwin Thibault, and Harold	:
Studebaker,	:
Defendants.	:

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed November 12, 2009. Plaintiff's objections were filed November 19, 2009.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

IT IS HEREBY ORDERED that the Plaintiff's motion for leave to proceed in forma pauperis (Doc. 1) is DENIED and that this

case is DISMISSED without prejudice. Also, Plaintiff's motion to appoint counsel (Doc. 2) is DENIED as moot.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is DENIED because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

Dated at Burlington, in the District of Vermont, this 1st day of December, 2009.

/s/ William K. Sessions III  
William K. Sessions III  
Chief Judge